D.B.CIVIL SPECIAL APPEAL NO. 982/2006
Smt. Prem Lata v. National Insurance Company Ltd. & ors.

Date of order : 24.04.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri Hridayesh Singh for the appellant

This special appeal is directed against the order of the learned Single Judge dated 5.8.2005 in S.B.Civil Writ Petition no. 4554/1999. The petitioner had filed the writ petition for quashing the letter of the respondent, National Insurance Company Ltd. dated 12.11.1998 repudiating the claim of the appellant for compensation. The learned Single Judge noticed the stand of the respondent that the appellant's husband had consumed alcohol prior to the accident and he was himself responsible for the accident. The learned Single Judge thus held that there was dispute as to circumstances in which the accident took place. The learned Judge observed that though there was no conclusive proof as to whether the deceased had consumed liquor prior to the accident, a serious dispute has arisen and no finding can be recorded in that regard by this Court. However, he directed the Insurance Company to pay ex gratia compensation of Rs. 50,000 to the petitioner.

It is relevant to mention here that repudiation of claim was on the ground that the case was covered by exception 5 (b) in terms of which Insurance Company is not liable for compensation under the policy in respect of death etc. “whilst under the influence of intoxicating liquor or drugs”. It is plain that the question as to whether the case is covered by the aforesaid clause is question of fact which can be decided only on evidence. Recourse to writ jurisdiction in our opinion, was misconceived. The appellant , if so advised, could file civil suit, lead evidence and prove her case to the contrary. We are of the view that in the circumstances no relief can be granted in writ petition.

We accordingly find no ground to interfere with the order of the learned Single Judge. Appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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